

COLORADO HOA FORUM
WWW.COLORADOHOAFORUM.COM EMAIL: COLORADOHOAFORUM@GMAIL.COM
PROPOSAL TO IMPLEMENT HOA HOME FORECLOSURES

THIS IS A FIRST DRAFT

COLORADO HOA LAWS, CCIOA, DEFINE MUCH OF THE HOA FORECLOSURE PROCESS. THIS PROPOSAL IS NOT MEANT TO REPLACE ALL THOSE MANDATES BUT TO REFINE MANY OF THEM TO PRECLUDE ABUSIVE PRACTICES. MANY OF THE STATE HOA RULES ARE REPEATED, RESTATED OR REFINED IN THIS PROPOSAL TO ADDRESS HOMEOWNER'S ISSUES, RIGHTS AND FLAWS IN CURRENT LAWS. OF PARTICULAR NOTE WE ATTEMPT TO ADDRESS RESPONSIBLE INVOLVEMENT OF THOSE INVOLVED IN THIS PROCESS INCLUDING HOA MANAGEMENT COMPANIES AND LAWYERS NOT ADDRESSED IN CURRENT LAW. WE ALSO INCLUDE THE ISSUES OF EXCESSIVE FEES AND FORECLOSURE HOME AUCTIONS ALSO NOT IN CURRENT LAW. TO GET TO A FINAL VERSION WILL REQUIRE MATCHING THIS PROPOSAL WITH CURRENT LAW AND INTEGRATING CHANGES. THIS RECOMMENDATION IS NOT INTENDED TO ELIMINATE AN HOAs AUTHORITY TO PLACE LIENS AND FORECLOSURES OR TO INHIBIT THEIR ABILITY TO COLLECT FINES, FEES, ASSESSMENTS AND OTHER HOA DEBT. THIS IS A FIRST DRAFT INTENDED TO REWRITE COLORADO HOA FORECLOSURE REQUIREMENTS.

THIS RECOMMENDATION IS INTENDED TO ALLOW THE FORECLOSURE PROCESS IN HOMEOWNERS ASSOCIATIONS (HOAs) TO BE COMPLETED WITH HOMEOWNER PROTECTIONS. IT PROVIDES ACCOUNTABILITY ON ALL THOSE INVOLVED IN THE FORECLOSURE PROCESS AND A HOMEOWNERS AN ABILITY TO CONTEST EVENTS IN THE FORECLOSURE PROCESS IN AN AFFORDABLE AND IMPARTIAL VENUE. IT WILL NOT INCREASE COSTS TO HOAs, MANAGEMENT COMPANIES OR LAWYERS INVOLVED IN THE FORECLOSURE PROCESS. IT LIMITS FINES, FEES AND ASSESSMENTS ON DEBT TO PREVENT ABUSIVE BILLING PRACTICES THAT OFTEN CAN RESULT IN A MINOR DEBT EVOLVING INTO AN AMOUNT THAT PLACES AN UNDUE AND UNFAIR BURDEN ON THE HOMEOWNER ENSURING SUCH DEBT MOVES TO FORECLOSURE ACTION. ANY REFORM MUST CONSIDER ALL ASPECTS OF THE HOMEOWNER AND HOA RELATIONSHIP FROM INCURRENCE OF DEBT TO COLLECTION ACTION AND THE NOTIFICATION PROCESS. THE FOLLOWING SUGGESTS THE FEATURES OF FORECLOSURE

REFORM. ELIMINATING ANY ONE OR MORE ITEMS WILL OPEN HOLES IN THE PROCESS TO MITIGATE THE IMPACT OF THE TOTAL PROGRAM. CCIOA ADDRESSES FORECLOSURES, LIENS AND COLLECTION POLICIES AND SHOULD BE MODIFIED AS NEEDED TO IMPLEMENT THIS PROPOSED PROCESS.

- 1. HOMEOWNERS INCURRING ANY HOA DEBT OTHER THAN RECURRING OBLIGATIONS FOR HOA DUES/FEEES, SUCH AS NON-PAYMENT AND/OR LATE PAYMENT OF SPECIAL ASSESSMENTS, COVENANT VIOLATION FINES/FEEES MUST BE APPRISED OF SUCH DEBT WITHIN ONE WEEK OF THIS EVENT. THE HOMEOWNER WILL BE NOTIFIED OF THE AMOUNT OF DEBT, WHEN THE VIOLATION OR DEBT WAS INCURRED, AN EXPLANATION OF DEBT, AND A STATEMENT ON ALL CORRESPONDENCE EXPLAINING PENALTIES FOR NON OR DELINQUENT PAYMENTS INCLUDING ALL ADD-ON COSTS SUCH AS FEEES, INTEREST CHARGES, LEGAL COSTS AND COSTS TO NOTIFY THE HOMEOWNER AND THAT NON-PAYMENT CAN RESULT IN A LIEN ON THE PROPERTY AND/OR LEAD TO FORECLOSURE. NOTIFICATION WILL BE BY CERTIFIED LETTER THAT ENSURES SIGNATURE OF THE RECIPIENT AND SUPPLEMENTED BY EMAIL, TEXT AND PHONE CALL IN THE EVENT CERTIFIED MAIL FAILS TO CONTACT THE HOMEOWNER. HOAs WILL MAINTAIN A RECORD OF NOTIFICATION(S) . CERTIFIED MAIL WITH A SIGNED RECEIPT WILL BE CONSIDERED THE OFFICIAL AND MANDATORY NOTIFICATION.**
- 2. FOLLOW-UP TO THE INITIAL NOTIFICATION WILL INCLUDE THE SAME INFORMATION AND USE THE SAME METHOD OF NOTIFICATION AND INDICATE THE TIME TABLE FOR IMPOSING A LIEN AND IF SUCH LIEN IS NOT RESOLVED THE HOA CAN FORECLOSE ON THE PROPERTY.**
- 3. ALL NOTICES WILL INFORM THE HOMEOWNER THAT THEY CAN ENTER INTO A PAYMENT PLAN OR NEGOTIATE WITH THE HOA BOARD ON A FINANCIAL SETTLEMENT. THE HOMEOWNER SHOULD BE INFORMED OF THEIR OBLIGATIONS AND CONSEQUENCES IN THE EVENT THEIR RESPONSIBILITIES ARE NOT MET.**
- 4. THE HOA CAN BEGIN FORECLOSURE ACTION AT THEIR DISCRETION AND UPON APPROVAL OF THE HOA BOARD AND IN ACCORDANCE WITH THEIR HOA GOVERNING DOCUMENTS THAT MUST HAVE A BILLING AND COLLECTION POLICY OR FORECLOSURE ACTION CAN'T BE INITIATED.**

5. FORECLOSURE ACTION WILL ONLY COMMENCE WHEN THE HOMEOWNER IS AT LEAST SIX MONTHS IN ARREARS AND/OR THE CUMULATIVE AMOUNT OF DELINQUENT ASSESSMENTS ARE EQUAL TO AT LEAST SIX MONTHS OF RECURRING ASSESSMENTS.
6. NO FORECLOSURE WILL PROCEED/BEGIN IF BASED SOLELY ON UNPAID/DELINQUENT FINES AND/OR FEES.
7. ANY NOTICE OF LIEN OR FORECLOSURE MUST INCLUDE APPRISING THE HOMEOWNER OF THE HISTORY OF NOTIFICATION AND PAYMENTS LEADING TO THE ACTION INCLUDING A DESCRIPTION OF CHARGES AS PREVIOUSLY MENTIONED AND PROVIDE THE OPPORTUNITY FOR THE HOMEOWNER TO RESPOND WITHIN SEVEN DAYS TO ANY PAYMENT PLAN THEY WISH TO ENTER OR OTHER OPTION TO EXTINGUISH THE DEBT AND RELATED FORECLOSURE ACTION. THE HOMEOWNER WILL ALSO BE APPRISED OF ALL COSTS INCURRED OR TO BE INCURRED DURING THE LIEN OR FORECLOSURE ACTION BY LINE-ITEM CHARGE INCLUDING THE RATE OF INTEREST ON UNPAID DEBT AS APPLICABLE.
8. THE CAP ON THE HOA ASSESSED INTEREST RATE IS EIGHT PERCENT.
9. THE COLLECTION AGENCY, MANAGEMENT COMPANY, AND LEGAL ENTITIES MUST GAIN HOA BOARD APPROVAL ON ALL COLLECTION, LIEN AND FORECLOSURE ACTIONS AND THE RELATED CHARGES AND FEES.
10. THE HOMEOWNER WILL ONLY BE RESPONSIBLE FOR PAYING ATTORNEY FEES ON DEBT IN A FORECLOSURE ACTION EQUIVALENT TO SIX MONTHS OF RECURRING ASSESSMENTS.
11. THE HOA HAS NO MORE THAN SIX MONTHS TO COMPLETE FORECLOSURE ACTION INCLUDING HOME SALE FROM THE TIME BEGINNING WHEN THE HOMEOWNER IS NOTIFIED THAT SUCH ACTION WILL BE FILED OR FROM THE DATE OF DEFAULT OF THE HOMEOWNER'S OBLIGATIONS UNDER THE PAYMENT PLAN. IF SUCH ACTION IS NOT COMPLETED THE HOA IS SUBJECT TO A PENALTY THAT CAN INVOLVE CANCELLATION OF THE HOMEOWNER'S DEBT AND/OR PRECLUDING THE FORECLOSURE ACTION.
12. A PENALTY OF UP TO \$10,000 WILL BE ASSESSED TO ANY MANAGEMENT COMPANY OR LEGAL FIRM FOUND TO BE PARTICIPATING IN OR AWARE OF NON-COMPLIANCE WITH HOA FORECLOSURE RULES WITH SUCH AWARD GOING TO THE HOMEOWNER.
13. HOAs WILL NOT BE ABLE TO INCLUDE ANY ADD-ON ADMINISTRATIVE COSTS, FEES, FINES, INTEREST CHARGES, LEGAL COSTS OR OTHER AMOUNTS TO THE DEBT THAT EXCEEDS SIX TIMES THE INITIAL AMOUNT

OWED PRIOR TO LIEN OR FORECLOSURE ACTION. UPON EXECUTING LIEN OR FORECLOSURE ACTION LEGAL FEES CAN BE APPLIED BUT ONLY TO AN AMOUNT CONSIDERED AND DEFINED AS REASONABLE BY DORA.

14. THE HOMEOWNER CAN CONTEST ANY CHARGE OR PROCESS RELATED TO THE DEBT IN A LIEN OR FORECLOSURE THROUGH A PROCESS SET UP BY DORA THAT WILL RENDER A DECISION TO END THE LIEN OR FORECLOSURE ACTION OR DEEM THE LIEN OR FORECLOSURE TO BE JUSTIFIED AND IN COMPLIANCE WITH THE LAW.
15. ANY LEGAL FEES BILLED TO THE HOA BY A LAWYER, LAW FIRM OR MANAGEMENT COMPANY IN EXCESS OF STATED LIMITS IN THIS LAW WILL NOT BE CONSIDERED VALID AND NOT BILLABLE TO THE HOA OR HOMEOWNER.
16. THE PENALTY TO AN HOA FOR NON-COMPLIANCE WITH HOA FORECLOSURE LAW CAN INVOLVE DENYING THEIR ABILITY TO: ASSESS FINES FOR COVENANT VIOLATIONS; IMPOSE LIENS AND/OR INITIATE ANY FORECLOSURE ACTIONS; AND/OR CANCELLATION OF HOMEOWNER DEBT AND/OR FORECLOSURE ACTION. REPEATED OFFENSES CAN ALSO RESULT IN REMOVAL OF BOARD MEMBERS THAT WERE INVOLVED DIRECTLY WITH THE VIOLATION. BOARD MEMBERS WOULD NOT BE SUBJECT TO FINANCIAL LIABILITY.
17. A FORECLOSED HOME CAN 'T BE SOLD AT ANY AUCTION FOR LESS THAN 80% OF MARKET VALUE. THE MARKET VALUE WILL BE DETERMINED BY AN APPRAISER WITH THE COST TO THE HOMEOWNER. A HOMEOWNER CAN HIRE THEIR OWN APPRAISER IF THEY WISH TO CHALLENGE THE MARKET VALUE SELLING PRICE AT THE FORECLOSURE AUCTION BUT SUCH EXPENSE IS THE HOMEOWNERS. WHEN DISAGREEMENT OCCURS OVER THE SELLING PRICE DORA WILL MAKE THE FINAL DECISION.
18. AN HOA MUST NOTIFY THE MORTGAGE COMPANY OF ANY FORECLOSURE ACTION (THIS IS TO AVOID ISSUES RELATED TO THE HOA SUPER LIEN THAT CAN CANCEL ANY CLAIM BY A MORTGAGE COMPANY TO THE HOME SALE PROCEEDS) AND ALSO ALLOW FOR A NON-JUDICIAL FORECLOSURE BY THE FINANCIAL INSTITUTION TO PRECLUDE THE HOMEOWNER FROM EQUITY LOSS IN ANY SALE. NOTIFICATION WILL BE BY CERTIFIED MAIL WITH THE COST ASSESSED TO THE HOMEOWNER.
19. REFERRING A DEBT TO A COLLECTION AGENCY MUST BE APPROVED BY THE HOA BOARD WITH ANY SUCH FEES LIMITED TO SIX MONTHS OF RECURRING ASSESSMENTS.

20. ANY COURT APPROVING A FORECLOSURE THAT HAS NOT COMPLIED WITH THESE FORECLOSURE RULES WILL BE SUBJECT TO A FINE NOT TO EXCEED \$10,000 WITH SUCH PROCEEDS AWARDED TO THE HOMEOWNER.
21. THE HOA BOARD WILL BE REQUIRED TO REVIEW AND APPROVE ON A MONTHLY BASIS ALL ACTIVE LIENS AND FORECLOSURES FOR STATUS AND TO ENSURE ALL ADD-ON COSTS HAVE BEEN APPROVED BY THE BOARD. .
22. HOMEOWNERS MUST BE NOTIFIED BY OF ANY LIEN OR FORECLOSURE ACTION WITHIN SEVEN DAYS OF SUCH ACTION BEING EXECUTED.
23. HOME EVICTION ACTIONS MUST BE PROVIDED TO THE HOMEOWNER AND IN THE CASE OF A RENTAL PROPERTY ALSO NOTIFY THE RENTER OF ANY PLANNED DATE OF EVICTION. NOTICE WILL BE SERVED NO LESS THAN TWO WEEKS PRIOR TO THE EVICTION DATE AND BE BY CERTIFIED MAIL WITH SIGNATURE OF INTENDED RECIPIENT OR BY EMAIL OR TELEPHONE CALL IN THE EVENT CERTIFIED MAIL DOESN'T CONTACT THE PARTIES.
24. HOMEOWNERS WILL BE PROVIDED THESE FORECLOSURE RULES AT LEAST TWICE A YEAR, INTEGRATE THEM INTO THEIR GOVERNING DOCUMENTS AND NEW HOMEOWNERS WILL BE INFORMED OF SUCH PROCEDURES WITHIN TWO WEEKS OF OCCUPANCY.
25. HOAs WILL USE ANY FORECLOSURE SPECIALTY COMPANY THAT CAN PROVIDE COST SAVINGS TO THE HOA AND/OR HOMEOWNER VS THE COST OF USING THEIR OWN ATTORNEY OR MANAGEMENT COMPANY. THE COMPANY WILL BE SUBJECT TO ALL RULES AND PENALTIES UNDER THIS LAW. HOAs CAN CONSIDERED THE SERVICES REQUIRED FOR SUCCESSFUL FORECLOSURE WHEN SELECTING LEGAL COUNSEL.
26. THE HOA CAN'T INITIATE ANY FORECLOSURE ACTION ON DEBT RESULTING FROM THE DIRECT BILLING TO A HOMEOWNER BY THEIR MANAGEMENT COMPANY OR THEIR LEGAL FIRM OR ANY VENDOR ASSOCIATED WITH THE HOA. THIS LAW ONLY RELATES TO FORECLOSURES INITIATED DUE TO DEBT OWED THE HOA.
27. ANY COLLECTION AGENCY, METRO DISTRICT OR OTHER ENTITY INVOLVED IN BILLINGS AND COLLECTION ACTIVITY WITH AN HOA MUST COMPLY WITH THIS LAW OR BE SUBJECT TO FINES UP TO \$10,000.
28. A HOMEOWNER BRINGING CHALLENGE TO ANY PROCESS OR ACTION IN THIS LAW MUST PRESENT TO DORA OR OTHER DORA APPROVED DISPUTE RESOLUTION ENTITY THAT WILL HEAR THE COMPLAINT WITH EVIDENCE IN SUPPORT OF THE VIOLATION OF THIS LAW INCLUDING ALL NOTICES, EMAILS, CERTIFIED MAIL, TEXT MESSAGE, INVOICES, EVIDENCE

OF DENIAL/OFFERING OF A PAYMENT PLAN AND OTHER INFORMATION TO SUPPORT THE COMPLAINT. ABSENCE OF SUPPORTING EVIDENCE ACCOMPANYING A COMPLAINT BY THE HOMEOWNER WILL RESULT IN THE COMPLAINT NOT BEING REVIEWED AND JUDGED UPON.

29. THE DISPUTE RESOLUTION AUTHORITY UNDER THIS LAW WILL BE WITHIN DORA OR A DORA APPROVED ENTITY. THE AUTHORITY WILL HEAR HOMEOWNER FORECLOSURE AND LIEN COMPLAINTS AND RENDER DECISIONS AND WILL ALSO BE EMPOWERED TO LEVY FINES AND PENALTIES FOR NON-COMPLIANCE AND OR THE REMOVAL OF A BOARD MEMBER(S) FOR NON-COMPLIANCE WITH THIS LAW. THERE WILL BE NO APPEAL PROCESS RELATED TO THESE DECISION OR PENALTIES.
30. THE HOA REGISTRATION PROCESS WILL REQUIRE THAT EACH HOA ACKNOWLEDGE THIS PROCESS INTO THEIR GOVERNING DOCUMENTS AND WILL COMPLY WITH THE REQUIREMENT TO APPRISE ALL HOMEOWNERS OF SUCH POLICY AT LEAST TWICE EACH YEAR. FAILURE TO DO SO WILL PRECLUDE THE HOA FROM PURSUING ANY FORECLOSURE ACTION.
31. PRIOR TO THE FORECLOSURE HOME SALE AUCTION THERE WILL BE A CERTIFICATION AND NOTIFICATION TO THOSE CONDUCTING THE AUCTION THAT THE HOME WILL NOT BE SOLD FOR LESS THAN 80% OF MARKET VALUE AND BE APPRISED OF SUCH SALE PRICE BASED ON THE APPRAISALS COMPLETED THROUGH THE HOA AND/OR HOMEOWNER.
32. THE HOMEOWNER WILL BE PROVIDED A COMPREHENSIVE LIST OF ALL THEIR DEBT OBLIGATIONS BY LINE ITEM SEVEN DAYS PRIOR TO THE AUCTION INCLUDING AUCTION FEES, LEGAL FEES, ADMINISTRATIVE OVERHEAD, AND OTHER COSTS AND THE RECIPIENT OF SUCH CHARGES. CHALLENGES BY THE HOMEOWNER TO SUCH DEBT AMOUNT MUST BE COMPLETED PRIOR TO THE AUCTION.
33. THE HOMEOWNER WILL BE NOTIFIED NO LESS THAN TWO WEEKS PRIOR TO THE DATE OF EVICTION WHICH MUST BE AT LEAST TWO WEEKS AFTER THE HOME IS SOLD AT AUCTION.
34. HOA FORECLOSED HOMES CAN'T BE PURCHASED BY ANYONE ASSOCIATED WITH THE LEGAL FIRM, MANAGEMENT COMPANY OR HOA BOARD MEMBER OR THEIR RELATIVE THAT WERE INVOLVED IN OR AWARE OF THE FORECLOSURE ACTION.
35. NO INTEREST CHARGES CAN BE ADDED ON TO DEBT RELATED TO FINES.
36. NO HOA CAN RELY ON THE COLLECTION OF FINES AND FEES TO PAY FOR OPERATING EXPENES.

- 37. FORECLOSURES CAN BE PURSUED BY AN HOA FOR DELINQUENT ASSESSMENT AND HOA DUES AND FOR DEBT RESULTING FROM THE ACTIONS OF A HOMEOWNER THAT HAS CAUSED FINANCIAL DAMAGE TO THE HOA AND IN WHICH THE HOA HAS EXPENDED FUNDS TO CORRECT.**
- 38. RENTAL AGREEMENTS AND REQUIREMENTS FOR PROPERTIES IN HOAs WILL INCLUDE A CLAUSE THAT THE HOMEOWNER – LANDLORD WILL PAY HOA MONTHLY OR OTHER ASSESSMENTS UPON COLLECTION OF RENT OR BE REQUIRED TO SET UP AN AUTOMATIC MONTHLY OR OTHER AGREED UPON FREQUENCY PAYMENT FROM A FINANCIAL ACCOUNT. ALTERNATIVELY THE HOMEOWNER CAN BE REQUIRED TO SEND THE RENTAL PAYMENT TO THE HOA THAT WILL DEDUCT ANY ASSESSMENT DUE AND SEND THE REMAINDER TO THE HOMEOWNER. THE HOA CAN CHARGE A FEE OF NO MORE THAN \$35 FOR EACH TRANSACTION. THE LEASE AGREEMENT CAN BE REQUIRED TO INCLUDE A PROVISION THAT THE RENTER PAYS THE HOA THE ASSESSMENT EACH MONTH. HOMEOWNER DELINQUENCIES TO THE HOA OR DELINQUENCIES INCURRED BY THE RENTER WILL BE FINED \$100 FOR THE FIRST INSTANCE OF NON-PAYMENT, \$250 FOR THE SECOND LATE PAYMENT AND \$400 FOR THE THIRD INSTANCE. AFTER THE THIRD INSTANCE THE PRIVILEGE TO RENT WILL BE REVOKED AND THE RENTER WILL BE GIVEN 60 DAYS TO VACATE. DELINQUENCIES OF ASSESSMENTS AND RELATED FINES ARE DEBT OF THE HOMEOWNER.**
- 39. NO PERSON SERVING ON THE HOA BOARD OR THE HOA'S PROPERTY MANAGEMENT COMPANY PERSONNEL MAY BE INVOLVED IN THE PURCHASE OF AN HOA FORECLOSURE.**
- 40. ATTORNEY FEES RELATED TO DEBT COLLECTION IN EXCESS OF SIX MONTHS OF HOA RECURRING ASSESSMENTS WILL NOT AND CAN'T BE PAID FOR BY THE HOMEOWNER.**
- 41. THE "SUPER LIEN" IS PRECLUDED FROM HOA FORECLOSURES.**